

NOTICE OF PUBLIC HEARINGS

NOTICE is hereby given that the Montgomery County Auditor and Montgomery County Engineer of Montgomery County, Ohio will hold two public hearings concerning the adoption of **Standards Governing the Conveyance of Real Property** in Montgomery County, Ohio.

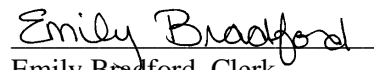
The public hearings will be held on **Tuesday, June 8, 2021** and **Tuesday, June 22, 2021** at **3:00 p.m.** for the adoption of Standards Governing the Conveyance of Real Property in Montgomery County, Ohio.

The proposed Standards Governing the Conveyance of Real Property in Montgomery County, Ohio can be found on the Montgomery County Auditor and Montgomery County Engineers websites.

Due to the COVID-19 pandemic, and in compliance with the Governors limitation on mass gatherings the above referenced public hearings are currently scheduled to be conducted virtually, or “remotely” via Zoom.us and livestreamed on the County’s Facebook page (@MontgomeryCounty). If you wish to participate and/or testify at the public hearing, please contact Jeremy Popp, Auditors Office poppj@mcoho.org or Wayne Boutwell, Engineers Office boutwellw@mcoho.org for additional instructions.

Should the Governor’s limitation be lifted prior to the above-scheduled dates, the public hearings will take place in-person at the County Administration Building, 451 W. Third Street, Dayton, OH 45422, 10th Floor, Room 1001.

BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO:


Emily Bradford, Clerk

Published in the Daily Court Reporter

On **Friday, May 21, 2021** and **Friday, May 28, 2021**

1 Certified Ad

To the Court Reporter on _____.

PROPOSED

STANDARDS GOVERNING CONVEYANCE OF REAL PROPERTY IN MONTGOMERY COUNTY, OHIO

PREFACE

Ohio Revised Code Section 319.203 provides that the County Engineer and the County Auditor of each county, by written agreement, shall adopt standards governing the conveyances of real property in the county. These standards may include surveying standards as specified in Ohio Revised Code Section 315.251.

Section 315.251 of the Ohio Revised Code requires that a boundary survey be made in order to convey a portion of an existing parcel, or to change the legal description for an existing parcel. It also requires that the survey meet the Minimum Standards for Boundary Surveys, as promulgated by the Board of Registration for Professional Engineers and Surveyors, as contained in Chapter 4733.37 of the Ohio Administrative Code. It further provides that the County Engineer review the survey plats and legal descriptions prepared by the surveyor for compliance with these standards.

In addition to these standards, conveyances must comply with all other county or local standards. Where these standards overlap other standards, the more stringent standard will apply. All deeds, plats, allotments and/or other forms of land conveyance must comply with the laws of the State of Ohio with respect to land transfers including the rules, regulations and procedures promulgated by the Ohio Department of Taxation, Division of Equalization, with respect to the collection of conveyance fees and exemption(s) therefrom. In the event that a question arises regarding the charging and collection of a conveyance fee, the burden to prove that a parcel(s) is exempt must be presented to the Auditor. If a question exists as to whether a conveyance is exempt or not, the fee will be charged, or the parcel(s) will not be conveyed.

Revised _____, 2021

STANDARDS GOVERNING CONVEYANCE OF REAL PROPERTY IN MONTGOMERY COUNTY, OHIO

PREAMBLE

As directed by Sections 315.251, 319.203, and other sections of the Ohio Revised Code, and to provide a consistent method of review, the following standards are hereby adopted to govern the conveyance of real property to be transferred on the tax list of Montgomery County, and all survey plats and descriptions of real property to be provided in conjunction with such conveyances.

The intent of these standards is to insure proper and accurate descriptions of property, to correct any errors that are evident, and to insure the property is accurately described for tax purposes. It is understood that all situations cannot be covered by these requirements, and when situations not covered arise, they will be handled as special cases and will be interpreted by the County Engineer and/or the County Auditor.

The terms “County Engineer” and “County Auditor”, as used herein, include the respective officers and employees of each office.

Section 1. Application of Transfer and Conveyance Rules.

These rules apply to any transfer and conveyance of an interest in real property made by conveyance, partition, devise, descent, court order, certificate of transfer, affidavit, or any other document, that would cause any of the following:

A. Change in the Name in the Owner(s) of Land.

Any document that creates, transfers, or terminates any interest in land or minerals that would cause the County Auditor to change the name of the owner, or any one of the owners, must be presented to the County Auditor under O.R.C. 319.20;

B. Change in Description

Any document that changes, corrects, or amends the description of any parcel of land must be presented to the County Auditor under O.R.C. 5713.02; or

C. Transfer of Interest That May Affect True Value

Any document that creates, transfers, or terminates any interest in land that may affect the true value of a parcel for real property tax purposes must be presented to the County Auditor under O.R.C. 5713.03.

Section 2. Special Transfers

The following are subject to special requirements:

A. Transfer by Affidavit of Next of Kin

A transfer under the law of descent and distribution may be made pursuant to affidavit under O.R.C. 317.22. A certified copy of the death certificate or other official acknowledgment of death must be attached to the affidavit.

B. Transfer of Survivorship Interest

A transfer of survivorship interest shall be made pursuant to O.R.C. 5302.17, only upon certificate of transfer or upon affidavit and certified copy of a death certificate of the deceased joint tenant.

C. Transfer by Affidavit Under O.R.C. 5301.252

A transfer of the name of the owner or any one of the owners may be made by affidavit pursuant to O.R.C. 5301.252(B)(1); the correction of a legal description may be made by affidavit pursuant to O.R.C. 5301.252(B)(4) and (B)(5); however, except in the case of the termination of a life estate or survivorship estate, no transfer shall be made by affidavit pursuant to O.R.C. 5301.252(B)(2) and (B)(3).

Section 3. Specific Requirements for All Documents of Transfer

All documents transferring an interest in real property that are subject to O.R.C. 319.20, including all court orders and certificates of transfer, shall contain all of the following:

A. Reference to Prior Instrument of Record

A reference to the Instrument Number of the record of the next preceding recorded instrument by or through which the grantor claims the title, as required by O.R.C. 319.20.

B. Identification of Interest Conveyed

The grantor shall state on the instrument of transfer whether the grantor is conveying all, or less than the grantor's current interest in the land.

C. Instruments to Conform to Law

All deeds and other instruments transferring an interest in Real Property shall conform to the laws of Ohio, or to the law of the place where the instruments were executed.

D. Document of Transfer Shall Include Parcel Number and Address

The document of transfer shall include all County Auditor's parcel number(s) of the land and the current site address of the property, *if any*.

E. Conveyance Forms

No instruments will be transferred unless accompanied by a properly completed “Department of Taxation Form” (DTE) 100 or (DTE) 100EX conveyance form.

Section 4. Quality of Documents

No Transfer will be approved by the County Auditor unless the documents presented to the County Auditor meet all of the following requirements:

A. Original Required

The document of transfer must have the original signature, or an e-signature, of the grantor or affiant. In most cases, a copy of a court order will be accepted, but the copy must bear the signature of a judge and be certified as a true and correct copy by the Montgomery County Clerk of Courts.

B. Illegible Writing

No document of transfer will be accepted in which the document, or attachment to it, is illegible as determined by the County Auditor or the County Engineer.

Section 5. Sufficiency of Description

When an existing parcel of land is being conveyed with no modification to the parcel’s boundaries, the previously recorded legal description may be used. The description used must exactly match the previously recorded description except that the instrument must reflect changes in corporate boundaries, *if any*.

A. Identification

The description of land shall be sufficient to allow the County Auditor and the County Engineer to identify the land that is being transferred. Clerical errors that do not affect the County Auditor’s or County Engineer’s ability to identify the property will be disregarded, but clerical errors or omissions that cannot be resolved will cause the County Auditor or County Engineer to disapprove the transfer.

B. Description of Tax Parcels

All documents that transfer an ownership interest in a tax parcel shall contain one of the following types of description:

1. Platted Lot

A platted lot shall be described by its lot number or other designation and the name of the subdivision as platted, including the plat book and page number, as required by O.R.C. 711.01.

2. Condominium Unit

A condominium unit shall be described by its unit number or other designation and the name of the condominium project set forth in the declaration, including the plat book and page number as required by O.R.C. 5311.10.

3. Metes and Bounds Description

Each tract of land that is not a platted lot or condominium unit shall be described by a metes and bounds description. All new metes and bounds legal descriptions shall be drafted in accordance with the Montgomery County Engineer's Standards for Plats of Surveys and Legal Descriptions, contained herein, and must thereafter be approved by the County Engineer. In cases where a specific parcel has been annexed to a municipal corporation and assigned a consecutive lot number, it is strongly encouraged that all future transfers include both the assigned lot number, as well as the existing metes and bounds survey, in order to insure proper and accurate descriptions of the property.

C. Standards for Metes and Bounds Descriptions

The County Auditor will review each metes and bounds description presented with an instrument of transfer. Each description of land shall be sufficient to allow the County Auditor, the County Engineer, and subsequent Grantees to specifically identify the land being transferred. Should the County Auditor discover certain insufficiencies within said description, the Auditor will stamp a **“Red Star”** on the description document. The **“Red Star”** stamp will not impede the immediate transfer of the property but will give notice to all future landowners that the description cannot be used to transfer the land in the future, and that the description will not be accepted by the County Auditor for future transfer. All future transfers will require a new survey, drafted in compliance with the Montgomery County Engineer's Standards for Plats of Surveys and Legal Descriptions, contained herein.

The County Auditor will deem a description inadequate for future transfers in the following circumstances:

1. Invalid Point of Beginning

All descriptions must be referenced to an established survey monument as the point of beginning, as same is set forth more fully in Section 2(D) of the Montgomery County Engineer's Standards for Plats of Surveys and Legal Descriptions, contained herein. An invalid point of beginning renders the description insufficient and will result in the County Auditor's Office stamping the document with a **“Red Star”**.

2. Vague and ambiguous language

Vague and ambiguous terms, as are often found in older legal descriptions of land, such as “in a northerly direction” or “with the meanderings of a stream”, are oftentimes insufficient to properly identify the land subject to the proposed transfer. When the County Auditor deems necessary, the Auditor may consult with the County Engineer to determine if the possibly vague and/or ambiguous language is, in fact, insufficient to properly identify the property. Units of measurement must be in feet, and descriptions using terms of measurement such as “chains”, “rods” and “links” are likewise insufficient. In the event that it is determined that the legal description is vague or ambiguous, or contains insufficient units of measurement, the County Auditor’s Office will stamp the legal description with a “Red Star”.

3. The Description contains more than Two Exceptions

No transfer will be approved where the description of the land sets forth more than two (2) exceptions to any metes and bounds description. An “exception” describes land that is included in the general description, but is excluded from the land being transferred, and is identified by a separate description of its own. A transfer of land to a political subdivision for road right-of-way purposes shall not be considered an exception for the purposes of this rule.

There are certain types of transfers, however, that will be accepted for transfer by the County Auditor even if the legal description is stamped with a “Red Star”. They are:

- a. Transfers ordered by the Probate Court or a Certificate of Transfer.
- b. Transfers to and from immediate family members, specifically if no money is exchanged.
- c. Transfers to and from the same individual(s) or business, specifically if no money is exchanged.
- d. Transfers in completion of a previously recorded land contract that uses the same legal description.
- e. Transfers terminating a life estate using the same legal description.
- f. Any other transfer, which in the opinion of the County Auditor or the County Engineer would be in furtherance of a valid court order, from a court of competent jurisdiction transferring the real property, including but not limited to, a decree of foreclosure.
- g. Transfers with a letter from a surveyor stating that they have been hired to complete a new survey, which will be put on record once approved by the Engineer’s Office. Thereafter, no future transfers of the subject property will be permitted without a new legal description, and no subsequent letters from a surveyor will be acknowledged.

Section 6. Breaks in the Chain of Title

A. Grantor is Not Prior Grantee

No transfer will be approved where a grantor is not a prior grantee, unless the document itself or an affidavit that satisfies the requirements of the O.R.C. 5301.252 is provided to the County Auditor and that explains to the County Auditor's satisfaction why there is a break in the chain of title. The County Auditor may also require additional evidence when necessary, to establish the correct ownership of the property.

B. Minor Differences in Names

Differences in the name of the grantor and a prior grantee based upon the inclusion or omission of middle names or initials, or different versions of first names (e.g. Charles, Charlie), or due to change in name, and similar differences of a minor nature, must be explained in the document itself or an affidavit, as required by O.R.C. 5301.252(B) (1).

Section 8. Transfers of Property in the Name of a Trust

A. Upon the death, resignation, removal or other event terminating the appointment of a trust, which trustee holds title to real property, the successor trustee or co-trustee must present an affidavit to the County Auditor and file an affidavit with the County Recorder, in accordance with O.R.C. 5302.171. The affidavit must include the following:

1. The name of the trustee who ceased serving as trustee;
2. The name and address of any other trustee;
3. A reference to the deed or any other instrument vesting title in the trustee;
4. A legal description of the real property in the trust.

B. Such affidavit is not required if the original trust document names the trustees and successors and contains relevant facts pertaining to the succession of trustees, or if a memorandum of trust, in compliance with O.R.C. 5301.255, that contains relevant facts pertaining to the succession of trustees, is recorded in the Office of the County Recorder.